

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 25 TH DAY OF May 1998

BEFORE

THE HON'BLE MR.JUSTICE H.RANGAVITTALACHAR

HRRP NO.312 of 1994

Between:-

B.Lakshminarayana,
s/o.Byatarayappa,
age: 50 yrs.,
r/o.No.100,Near Munsewara Temple,
Padmanabhanagar,
Bangalore - 560 070. .. Petitioner

(bY Sri P.Natarajan - Adv.)

And :.

H.Boraiah,Major,
s/o.Chikkaputtaiah,
r/o.No.46/4,
9th Main Road,
Devarajurs Nagar,
Bangalore. .. Respondent

(by Sri.Krishanappa- Adv.)

This HRRP is filed under Sec.50(1) of KRC Act,
against the order dtd.15.7.92 passed in HRC
No.10506.90 on the file of the Xv Addl.Judge, Court
of Small Causes, Bangalore City, dismissing the
petition filed under Sec.21(1)(a) & (h) of KRC Act.

This HRRP coming on for admission this day, the
Court made the following Order:

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ORDER

Heard.

2. Admit.

3. With the consent of the learned counsel appearing for the landlord and tenant, this matter is taken up for final hearing and disposed of by this order.

4. Respondent Boraiah to this petition borrowed a sum of Rs.30,000/- from the petitioner on 19.11.1997. For due repayment of the loan as security, he mortgaged premises bearing No.46, 4th Main, 33rd Division, Devaraj Urs Nagar, Bangalore by means of a registered usufructuary mortgage. According to the ^{Petitioner} ~~respondent~~, he later put the ^{Respondent} ~~petitioner~~ back in possession as a tenant on a monthly rent of Rs.1200/-. Since he did not pay the agreed rents, he filed an eviction petition under Sec.21(1)(a) & (h) of the Karnataka Rent Control Act against the respondent. Respondents filed detailed objection to the petition denying relationship of landlord and

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tenant. He also pleaded that the usufructuary mortgage deed was a document setup for the purpose of filing an eviction petition. However he has admitted of having borrowed a sum of Rs.60,000/- agreeing to repay the same with a monthly interest of 2% p.a.

5. During the pendency of the said eviction petition, petitioner herein also made an application under Sec.29(1) of the Karnataka Rent Control Act requesting the Court to direct the respondent to pay the arrears of rent and on his failure to stop the further proceedings.

6. This application was contested. Hence the trial Court held an enquiry on the said application. During the enquiry, petitioner examined himself as P.W.1 in support of his case and produced the registered usufructuary mortgage deed and also counter foils of the rent receipts to prove the fact of tenancy as Ex.P.3 to Ex.P.11 apart from producing the notices exchanged between the parties and also the rent deed executed by the respondents in favour of the petitioner evidencing the fact of his taking the premises on lease on a

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monthly rent of Rs.1000/-. It has to be stated that the respondent did not tender any evidence in support of his case or challenged the case of the petitioner; However the trial Court dismissed the application solely on the ground that there was no relationship of landlord and tenant and the relationship between the parties was only that of a creditor and debtor. This order is under challenge before this Court in this revision.

7. Heard the arguments addressed by both the counsels.

8. Ex.P.14 is a registered mortgaged deed, a reading of which clearly discloses that the respondent had under the documents delivered possession of schedule premises to the petitioner as security for the due repayment of the loan. The execution of ~~these~~ documents is not disputed nor challenged. Therefore what emerges from the documents is that respondents had parted with possession. Respondent either in his objection statement or by any evidence has not explained how he came back into possession of the schedule property. This absence of explanation if read

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with Ex.P.1 - the rent deed executed by the respondent(which execution also is not denied or challenged) and the rent receipts pertaining to the schedule property Ex.P.3 to Ex.P.11 clearly establishes the case of the petitioner that respondents after having parted with possession under the mortgage must have come back into possession as a tenant. This vital aspect has been totally lost sight off by the learned Judge of the Small Causes. Learned Judge of the Small Causes merely proceeds on the footing that just because petitioner in his evidence had admitted that a part from Rs.30,000/- under the mortgage, he had also advanced a further sum of Rs.30,000/-under a promissory note to be repaid with an interest of 2% p.a. It has to be presumed that there exists only a relationship of debtor and creditor. While coming to the said conclusion, the learned Judge has failed to appreciate the value to be attached to Ex.P.1, Ex.P.3 to P.11. The burden according to me was on the respondents to explain why he signed Ex.P.1 and the circumstances under which Ex.P.3 to Ex.P.11 existed. He has not discharged the said burden by adducing any evidence. In this

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case, he has not even stepped into the witness box to explain. Having regard to what is stated above, viz., that the respondent has failed to explain how he came into possession of the property after having parted with the same ^{read with} ~~in~~, Exs.P.3 to P.11 read with Ex.P.1, it has to be held that there exists a relationship of landlord and tenant between the parties in respect of the schedule premises.

9. Hence the order of the learned Judge of Small Causes is liable to be set-aside and is accordingly set-aside. Matter is remanded to the file of the learned Single Judge to dispose-off I.A.1 in the light of what is stated above expeditiously.

10. Revision petition is allowed. No order as to costs.

Sd/-
JUDGE

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